Remarks

The January 5, 2009 Official Action and the references cited therein have been carefully reviewed. Surprisingly, after receiving an Action on the merits, the Examiner has issued yet another requirement for restriction. Specifically, the Examiner now contends that the claims are directed to more than one species of generic invention and has deemed that these species lack unity. In view of this finding, the Examiner has required Applicants to elect a specific species of disease or condition to be treated selected from the group consisting of autoimmune disease, atopic/allergic disease or graft rejection. Applicants are also required to indicate those claims that read on the elected species.

In the new restriction requirement, the Examiner contends that the present invention does not make a contribution over the disclosure in US 6,642,008 ('008). Applicants disagree. As set forth in Applicant's previous response:

'008 describes use of LMP proteins (particularly LMP2A) in vaccines for treating EBV-associated malignancies. The LMP2A protein (or peptide fragments) may be fused to heterologous proteins to increase immunogenicity (col. 15, lines 32-49).

The LMP proteins and fusions can be given to individuals who already have latent EBV infection (col. 7 line 26-28). However, as in WO03/048337, the recipients are being treated, either therapeutically or prophylactically, for the ***consequences of EBV infection***. The new claims are specifically directed to prophylaxis or treatment of a disease or condition mediated by an immune response against a target antigen, such as an autoimmune disease, allergy, etc. This is very different from the conditions for treatment disclosed in the '008 patent. '008 contains no disclosure whatsoever of administration of a tolerogenic peptide sequence from an EBV-encoded LMP protein, in combination with a target antigen, to an individual suffering from a disease or condition mediated by an immune response against that target antigen. Applicants

take exception to the Examiner's assertion that the latent viral proteins of EBV can be considered a target antigen as contemplated by Applicant's claim 47 which requires that the sequences corresponding to the tolerogenic protein be different from those corresponding to the target antigen.

In view of all the foregoing, Applicants strenuously disagree with the Examiner's contention that the disclosure in the '008 patent defeats the unity of invention of the present claims. However, in order to be fully responsive, Applicants elect the species of atopic/allergic disease. Claims 6, 7, 41-43, and 47 read on the elected species.

Conclusion

It is respectfully submitted that the present claims are in condition for allowance and that this application is ready for issue. In the event the Examiner is not persuaded as to the allowability of any claim, and it appears that any outstanding issues may be resolved through a telephone interview, the Examiner is requested to telephone the undersigned attorney at the phone number given below.

Respectfully submitted,
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